

**Letter of Findings: 01-20190249
Individual Income Tax
For the Tax Years 2016 and 2017**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Individual failed to demonstrate that the Department erred in modifying his reported Indiana local tax withholding and offset credits.

ISSUE

I. Individual Income Tax - Local Withholding.

Authority: IC § 6-3.6-4-1; IC § 6-3.6-8-3; IC § 6-8.1-5-1; *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 3.1-4-10](#); Income Tax Information Bulletin 32 (July 2007).

Taxpayer protests the Indiana individual income tax imposed for tax years 2016 and 2017.

STATEMENT OF FACTS

Taxpayer is an individual who lived in Indiana but worked in a neighboring state during the 2016 and 2017 tax years. For each of these years, Taxpayer timely filed an Indiana income tax return claiming a refund. The Indiana Department of Revenue ("Department") refunded the claimed amount in both years. These returns reported withholding credits for Indiana state and local taxes, but a subsequent review showed that local taxes were not withheld and remitted to Indiana. The Department determined that local taxes were instead withheld and remitted to a neighboring state where Taxpayer worked. The amount withheld and remitted to that other state exceeded the amount available for credit against Indiana county tax, meaning the Department had issued excess refunds based on Taxpayer's returns. The Department therefore issued proposed assessments for the excess Indiana income tax refunded, plus interest. Taxpayer filed a written protest and an administrative hearing was held via teleconference. Additional facts will be provided as necessary.

I. Individual Income Tax - Local Withholding.

DISCUSSION

On his returns, Taxpayer claimed credits for Indiana local tax withheld on his behalf. In reviewing Taxpayer's W-2s, the Department found that the local tax was withheld for an out-of-state locality where Taxpayer worked. The Department therefore disallowed Taxpayer's credits for Indiana local tax withholding and added credits for the local taxes paid to another state. The issue is whether Taxpayer adequately demonstrated that these adjustments were incorrect.

As a threshold issue, it is a taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 485 n.9 (Ind.

Counties in Indiana impose an adjusted gross income tax on their local county residents. IC § 6-3.6-4-1. A taxpayer is a local county resident if he resides in the county "on January 1 of the calendar year in which the individual's taxable year commences." IC § 6-3.6-8-3(b). A taxpayer may be eligible, however, for a credit to reduce their local tax liability. If a taxpayer's income is subject to a local income tax in another state, the taxpayer may receive a credit for the lesser of: "(1) the amount of local income tax actually paid to the locality in the other state; (2) the amount of income taxed by the locality outside of Indiana multiplied by the Indiana county tax rate to which the taxpayer is subject; or (3) the actual amount of county income tax due." Income Tax Information Bulletin 32 (July 2007) 20070801 Ind. Reg. 045070440NRA; see [45 IAC 3.1-4-10](#). To prove eligibility for the credit, a taxpayer must provide either (1) a copy of the tax return filed with the out-of-state locality or (2) a copy of the W-2 form showing the local tax withheld. *Id.*

At the hearing, Taxpayer provided a copy of his W-2s for the tax years. These documents show that his employer withheld local income tax for the county where Taxpayer worked, which is outside Indiana. Taxpayer does not dispute his Indiana residence or claim that his employer withheld and remitted other money to pay his Indiana local income tax liability. Since the amount remitted to another state was higher than the amount of local tax due in Indiana, the W-2s support the Department's adjustments of both local county withholding and offset credits. Therefore, the refunds issued for 2016 and 2017 were for more than the available offset credits and the assessments to recover the excess refunds were correct. Taxpayer's protest is denied.

FINDING

Taxpayer's protest is respectfully denied.

June 5, 2019

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